the buildings. The answer to this contention appears to me to be that the description contained in the words 'land ... together with brick terrace erected thereon' imports no warranty or condition as to the continued existence or state of the terrace at the date of completion. It describes the subject matter of the contract as it stands at the date of the contract. If fire, lightning or tempest had destroyed or damaged the terrace after the making of the contract, these words could not have been relied upon to remove the case from the application of the ordinary equitable doctrine under which the loss would have fallen on the purchasers.

The argument that the matter was one of title seizes hold of the fact that service of the order or declaration by the commission operated to restrict or control the enjoyment of the full rights of ownership. The truth is, however, that it amounts only to a temporary restriction of rights as ancillary or incidental to the main purpose of altering the nature of the physical thing by demolishing the buildings. What has actually happened is that between the date of the contract and that of completion, the terrace has been demolished at the order of a public authority. If the order had been effective as a restriction of rights before the contract was made, it would have been another matter altogether. *Again, if the vendor had known that the making of an order was even under consideration and had failed to disclose his knowledge to the purchasers, the contract might have been voidable and, at all events, could hardly have been enforced specifically.* (Emphasis is mine.)

Thus in *Fletcher* v *Manton*[6] Dixon J besides pointing out that the parties therein were bargaining for the transfer from one to the other of slum property liable under the Slum Reclamation and Housing Act of 1938 to be affected at any time by the service of a demolition order also added a rider to his conclusion which clearly shows that if the vendor had known that the making of the order was under consideration by the Housing Commission and had failed to disclose this to the purchaser the contract might have been voidable and at all events, could hardly have been enforced specifically.

In the application before me the plaintiff himself carried out illegal alterations and withheld this information from the purchasers. The conclusion in *Fletcher* v *Manton*[6] should therefore not be applied. The suggestion without prejudice and without admission of liability by the plaintiff in his solicitors' letter of 22 August 1990 to 'withhold a reasonable sum of $50,000 to apply for and obtain the requisite approvals if any to the alleged alterations and improvement works' did not amount to an undertaking to rectify this latent defect at his expense on completion. Accordingly, the plaintiff's application is dismissed with costs.

Application dismissed

Solicitors: *Bernard Rada & Lee; Johns & Co.*

Reported by *Teoh Ai Lin*

Standard Chartered Bank v Chip Hong Machinery (S) Pte Ltd & Anor

HIGH COURT (SINGAPORE) — WRIT OF POSSESSION NO 1162 OF 1986 AND ORIGINATING SUMMONS NO 795 OF 1986
COOMARASWAMY J
10 DECEMBER 1990

Civil Procedure — Writ of possession — Whether irregular — Notice of proceedings not given to applicants

Landlord and Tenant — Equitable interest — Applicants an unincorporated society — Whether tenants or licensees of the premises — Whether applicants have an equity in the premises

This was an application by the second defendants to set aside a writ of possession taken out by the plaintiffs in respect of premises known as No 609/609A Bukit Timah Road, Singapore ('the premises') insofar as it related to No 609A which was the upper floor of the premises ('the upper floor'). The second defendants contended that the writ of possession was obtained irregularly in that notice of the proceedings under O 83 of the Rules of the Supreme Court 1970 had not been given to them and that they had merits in their defence to the plaintiffs' claim for possession.

Held, dismissing the second defendants' application:

(1) As a rule, writs of possession obtained irregularly ought to be set aside almost, if not altogether, as of right. However, in very exceptional cases where it is clear that setting aside the writ of possession would be an exercise in futility, the court ought not to act in vain.

(2) The second defendants could not claim an equity in the upper floor of the premises for the same reason they could not hold a tenancy, namely, that they had no legal personality as they were only a composite entity of fluctuating content and not a persona legalis. Once it was conceded that the second defendants could not in law hold a tenancy, they had from the outset absolutely no defence to the plaintiffs' claim.

Cases referred to

1 *Minet* v *Johnson* [1886-90] All ER 586 (refd)
2 *Singapore Shui Hing Co (Pte) Ltd* v *Singapore Sing Hua Poey Chin Association & Ors* [1976] 1 MLJ 217 (refd)
3 *Ang Bock Chwee* v *Lim Huan Hee* [1982] 1 MLJ 174 (refd)
4 *Vengadasalam* v *Khor Soon Weng* [1985] 2 MLJ 449 (refd)

Kan Ting Chui for the applicants/second defendants.
Lee Mun Hooi for the respondents/plaintiffs.

Cur Adv Vult

Coomaraswamy J: This was an application by the second defendants in these proceedings to set aside a writ of possession taken out by the plaintiffs in respect of premises known as No 609/609A Bukit Timah Road, Singapore ('the premises') insofar as it related to No 609A which was the upper floor of the premises ('the upper floor').

After hearing counsel for the second defendants and the plaintiffs, I dismissed the application with no order as to costs. I now give my reasons.

The first defendants (who were not parties to this application) mortgaged the premises to the plaintiffs to secure overdraft facilities. When they defaulted on payment, the plaintiffs commenced these proceedings on 9 July 1986 under O 83 of the Rules of the Supreme Court 1970 ('RSC') against the first defendants who were then the only defendants.

On 1 September 1986, the first defendants were ordered to deliver possession of the premises to the plaintiffs.

On 3 October 1986, a writ of possession was issued at the instance of the plaintiffs. On 13 February 1987, the writ of possession was executed by the bailiffs.

On 12 March 1987, the second defendants applied for by way of an ex parte summons-in-chambers and obtained an order to be joined as a party to the proceedings pursuant to O 15 r 10(1) of the RSC.

On 13 March 1987, they took out this application to set aside the writ of possession. They relied on two grounds. The first ground was that the writ of possession was obtained irregularly in that notice of the proceedings under O 83 of the RSC had not been given to them.

The second defendants cited para 88/2-7/3 of the 1988 Edition of the *Supreme Court Practice*, which reads:

> Parties — It seems clear from the decision in *Williams & Glyn's Bank Ltd* v *Boland* [1981] AC 481; [1980] 2 All ER 408 that there are only two categories of occupiers which concern the mortgage plaintiff. The first consists of those who may have an interest from contribution to the purchase or upkeep and the second consists of tenants or licensees with no such claim.
>
> It is suggested that the safest policy is to join as defendants any members of the first category who can be identified. Examples are spouses, parents, common law wives and possibly even adult children. This is a policy ex maxima cautela and should be modified by common sense.
>
> Members of the second category should not be joined, but must be given notice of the hearing before the master, and be told that they can attend and apply to be joined as defendants. If they can be identified, this notice can be given by letter and the carbon produced to the master. Where the names are unknown, notice should be given by fixing a similar letter to a suitable part of the property.

The second defendants said that they ought to have been given notice of these proceedings. They had been in occupation of the upper floor of the premises since 1947, and had paid rent to the first defendants and their predecessors in title. Their existence, although perhaps not their identity, was known to the plaintiffs. Yet, no notice of the hearing was sent to or affixed at the upper floor of the premises. As a result, only the plaintiffs and the first defendants were represented at the hearing when an order was made, without any apparent resistance from the first defendants, that possession of the premises should be delivered to the plaintiffs. The court was not informed at the hearing of the fact that the second defendants were in occupation of the upper floor of the premises. These were not denied by the plaintiffs.

The second defendants said that the irregularity by itself was a sufficient basis for the writ of possession to be set aside and that the question as to whether the plaintiffs would have obtained an order against the second defendants if the second defendants had been notified of the hearing and after they had joined in these proceedings and heard is irrelevant. They cited para 13/9/6 of the 1988 Edition of the *Supreme Court Practice* wherein it was stated that:

> Where a judgment is obtained irregularly, the defendant is entitled ex debito justitiae to have it set aside (*Anlaby* v *Praetorius* (1888) 20 QBD 764).

Minet v *Johnson*[1] was also relied upon.

I agree that as a rule, writs of possession obtained irregularly ought to be set aside almost, if not altogether, as of right. However, in very exceptional cases where it is clear that setting aside the writ of possession would be an exercise in futility, the court ought not to act in vain. And for reasons that will follow, this was a case in which the second defendants had absolutely no defence to the plaintiffs' claim for possession.

This brings us to the second ground of the second defendants' application, which was that they had merits in their defence to the plaintiffs' claim for possession.

The second defendants were registered as a society under what was then the Societies Ordinance on 5 July 1947. They had been occupying the upper floor of the premises since then. They said they paid rent to the first defendants and their predecessors in title. They produced a receipt issued by the first defendants evidencing payment of an annual rent of $200.40 for the year 1986. They said they had been expressly assured by one of the first defendants' predecessors in title that they could occupy the premises for as long as they wanted to, and as a result, they had expended their own funds to maintain, improve and upkeep the premises. Accordingly, according to their counsel, the second defendants had an equitable defence to the plaintiffs' claim for possession against them.

Counsel for the second defendants conceded that they, being an unincorporated society, could not hold a tenancy. That was well-established law in the following cases: *Singapore Shui Hing Co (Pte) Ltd* v *Singapore Sing Hua Poey Chin Association & Ors*;[2] *Ang Bock Chwee* v *Lim Huan Hee*[3] and *Vengadasalam* v *Khor Soon Weng*.[4]

However, counsel argued that the second defendants were not precluded from being licensees. And above being licensees, they had been told by one of the

first defendants' predecessors in title, Tan Siew Wah, who affirmed an affidavit to the effect, that she had told an unspecified member of the second defendants that she and her family would not want to recover possession of the upper floor and that the second defendants could 'rent the upper floor as long as they wanted for'. Tan also affirmed that during her nine years from 1957 to 1966 as owner of the premises, the second defendants had attended to the maintenance and upkeep of the upper floor of the premises on their own account.

The second defendants relied on this to say that they were licensees coupled with an equity. Their equity arose because:

(a) they had been occupying the upper floor of the premises for 47 years;
(b) Tan Siew Wah had assured them that they could stay there forever; and
(c) the second defendants spent money on repairs, maintenance and the like.

However, the second defendants' claim that they have an equity in the upper floor and therefore a defence to the plaintiffs' claim for possession was wholly untenable. In the first place, the second defendants could not claim an equity in the upper floor of the premises for the same reason they could not hold a tenancy, namely, that they had no legal personality as they were only a composite entity of fluctuating content and not a persona legalis: see *Ang Bock Chwee*'s case[3] and *Vengadasalam*'s case.[4]

Second, they had interpreted Tan Siew Wah's assurance as one that they could stay on the premises forever. In fact, Tan Siew Wah explained in her affidavit the context of her assurance. She had bought the premises in 1957 intending to use the lower floor for her own use as a shop. At the time of the purchase, both floors were tenanted. She tried to persuade the Hainanese tenant and his family to give up possession of the lower floor to her and did not come to any agreement with them because they asked for too high a sum for compensation.

As for the upper floor, she had no intention of using it. She was content to rent it to the second defendants. It was in this context that she said she did not want to recover possession of the upper floor and that the second defendants could 'rent the upper floor as long as they wanted to'.

Eventually, she sold the whole premises to the Hainanese family as a result of their refusal to move out. I am unable to see how the words of Tan Siew Wah uttered against this context could ever be relied upon by the second defendants as a promise that they could eventually obtain an equity in the upper floor of the premises.

Third, even if the second defendants could in law hold an interest in land and did acquire, on the facts, an equity in the upper floor, I am unable to see how that equity binds any of Tan Siew Wah's successors in title or the plaintiffs in the absence of any evidence that they knew of Tan Siew Wah's assurances to the second defendants. No caveat had been lodged against the premises. The plaintiffs were clearly entitled to treat the premises as unencumbered. And once it was conceded that the second defendants could not in law hold a tenancy, they had from the outset absolutely no defence to the plaintiffs' claim. I therefore dismissed the second defendants' application.

On the question of costs, I was of the view that in view of the plaintiffs' remiss in not having served notice of the hearing on the second defendants, thereby depriving them of any right of hearing they might otherwise have had, and thereby necessitating this application, I would make no order as to costs.

Application dismissed.

Solicitors: *RCH Lim & Co; Lee Bon Leong & Co.*

Reported by *Kevin Mathews*

Indian Overseas Bank v Lim Hug Hiong

HIGH COURT (SINGAPORE) — SUIT NO 348 OF 1982
YONG PUNG HOW CJ
18 DECEMBER 1990

Banking — Guarantee — Term loan — Whether defendant a guarantor — Defendant failed to sign guarantee — Loans disbursed — Defendant signing guarantee after loans disbursed — No further advances made

The plaintiffs' claim against the defendant was based on a guarantee executed by the defendant to secure payment on demand of all advances made to the company. In 1976 the company was granted credit facilities by the plaintiffs and executed a debenture in their favour to secure the facilities. Personal guarantees were also signed by two of its directors. A few months later the company required further facilities and on the recommendation of their business adviser the plaintiffs offered the company further facilities to be secured by creating an additional debenture and by personal guarantees of all its directors. At that relevant time the defendant had become a director of the company. The other two directors signed a guarantee in the plaintiffs' standard form and the company created the additional debenture in the plaintiffs' favour. However, no guarantee was signed by the defendant despite being requested by the plaintiffs.

Notwithstanding the fact that the facilities were to be made available only after all the formalities in connection with the debenture were completed and that the defendant had not signed any guarantee, the plaintiffs nevertheless proceeded to extend credit facilities covered by the debenture. The term loan was disbursed and another reminder to the company was sent informing them that the defendant had yet to sign the